

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 8336 of 2004(P)

I.A.1177/99 IN OS.102/1998 of SUB COURT,KATTAPPANA

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PETITIONER:

K.A.VARGHESE, S/O. ANTONY,
KUMPALANTHANAM HOUSE, MEENACHIL, EDAMATTOM VILLAGE
MEENACHIL TALUK.

BY ADV. SRI.T.I.ABDUL SALAM

RESPONDENTS:

1. CHACKOCHAN,
KADAMPUZHA HOUSE, KATTAPPANA KARA,
KATTAPPANA VILLAGE.
2. RAJAPPAN, S/O. KUTTAYI,
PAMPOORIKKAL HOUSE, AMBALAKAVALA KARA,
KATTAPPANA VILLAGE.
3. K.S.GEORGE, S/O. XAVIER,
KALLUNKALTHAZHA HOUSE, EETTITHOPPUKARA,
KALKOONTHAL VILLAGE, UDUMPANCHOLA TALUK.

R1 & R2 BY ADV. SRI.C.K.PAVITHRAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC.8336/04

APPENDIX

PETITIONER'S EXTS:

EXT.P1 – TRUE COPY OF PLAINT IN THE SUIT IN O.S.212/96 OF MUNSIF,
KATTAPPANA.

EXT.P2 – TRUE PHOTO COPY OF WRITTEN STATEMENT FILED BY RESPONDENTS IN
THE SUIT.

EXT.P3 – TRUE PHOTO COPY OF I.A.1179/99 DT.6.11.99.

EXT.P4 – TRUE COPY OF ORDER DT.10.2.2000

EXT.P5 – TRUE COPY OF ORDER DT.18.9.03 IN CRP.NO.1682/00

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C)No.8336 OF 2004
.....

DATED THIS THE 8th AUGUST, 2007

J U D G M E N T

The plaintiff who is the petitioner is aggrieved by Ext.P4 order by which the learned Subordinate Judge dismissed an application for impleadment of an additional party by name K.S.George, the 3rd respondent herein. The application was filed noticing a contention by defendants 1 and 2 that the B-schedule property which is the property allegedly trespassed upon by them is not in their possession but is in the possession of the 3rd respondent. To the impleadment application, respondents 1 and 2, the defendants in the suit filed an objection contending that the 3rd respondent-George is not a necessary party. It is that contention which is upheld by the learned Subordinate Judge under the impugned order.

2. The learned Subordinate Judge noticed that the title claimed by the plaintiff was based on an unregistered sale deed and that the plaint is silent as to what are the grounds on which recovery is sought for. The learned Judge inter alia observed as follows: "If it is on the strength of title, respondent is not a necessary party" and went on to observe that if the suit is for recovery on the strength of possession, then the suit will be barred since the same has not been instituted

within six months of dispossession. Interestingly, notice was not issued by the court below to the proposed additional 3rd defendant-George. Defendants 1 and 2 having contended through their written statement that the B-schedule property is in the possession of Mr.George were not entitled to contend that he is not a necessary party. I am at a loss to understand why the learned Subordinate Judge has observed that if recovery of B-schedule property is sought on the strength of title, then Sri.George is not a necessary party. So also, I find that the findings which are apparently entered by the learned Subordinate Judge on the maintainability and merits of the suit through Ext.P4 order were totally unwarranted for deciding the I.A. I would have been inclined to allow the I.A. straightaway. But I find that notice was not issued by the learned Subordinate Judge to the proposed additional 3rd defendant-George.

3. Accordingly I set aside Ext.P4 order and direct the learned Subordinate Judge to take a fresh decision on the application for impleadment after issuing notice to the 3rd respondent-George. Probably Sri.George who has not entered appearance in response to the notice issued by this Court may not contest. But, while taking a decision on the impleadment application, the court below should have

concern about the contention of the petitioner-plaintiff that in order to facilitate the passage of an effective decree capable of execution, Mr.George is also a necessary party, even if he contends that he is not a necessary party. The question of limitation will be decided by the court below without being influenced in any manner by what has been stated in Ext.P4.

The Writ Petition is allowed as above. No costs.

(PIUS C.KURIAKOSE, JUDGE)

tgl

WP(C)N0.8336/04